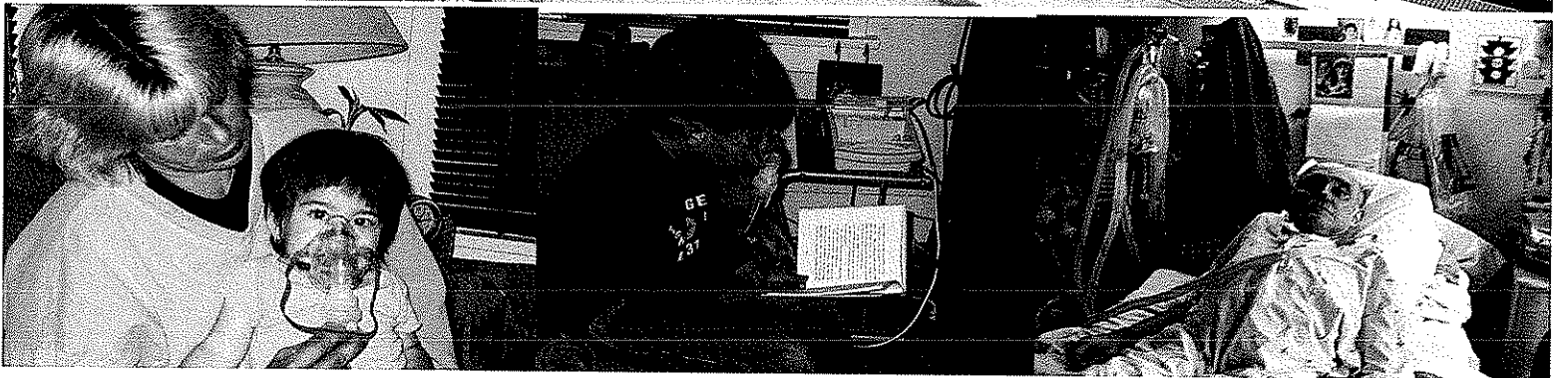


Jesse Marquez

10-6-5



This Is Not The Future We Want !!!

Stop Railroad Yard Air Pollution, Noise & Expansion In Our Communities

Coalition For A Safe Environment

1601 N. Wilmington Blvd., Wilmington, California 90744
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June 23, 2010

Chairman Mary D. Nichols & Members of the Board
California Air Resources Board
California Environmental Protection Agency
1001 I Street
Sacramento, CA 95818

Re: Air Resources Board Public Meeting
Su: Agenda Item # 10-6-5

The Coalition For A Safe Environment has reviewed the four CARB proposed Railroad Industry Commitments to reduce toxic air emissions and public health risk, unfortunately what has proposed is only the "minimum" that the railroad industry has agreed too.

CARB staff is only proposing 4 Railyard Commitments when 18 Major California Railyards have been identified as High Cancer Risk in the CARB Recommendations to Implement Further Locomotive & Railyard Emission Reductions September 2009 Report.

1. BNSF San Bernardino
2. Union Pacific ICTF Long Beach
3. Union Pacific Roseville
4. BNSF Hobart Los Angeles
5. Union Pacific Commerce
6. Union Pacific Oakland
7. Union Pacific City of Industry
8. BNSF Barstow
9. Union Pacific LATC
10. BNSF Watson Wilmington
11. BNSF Stockton
12. Union Pacific Colton
13. BNSF Richmond
14. Union Pacific Mira Loma
15. BNSF Commerce Eastern
16. Union Pacific Mira Loma
17. BNSF San Diego
18. BNSF Sheila Mechanical

Millions of California residents and children who live fence-line and near to railroad yards are at risk of dying prematurely, being afflicted with a lifetime serious respiratory disease, being permanently disabled and being significantly negatively financially impacted all of which are 100% preventable.

The California Air Resources Board has the legal responsibility to protect all 18 Major High Cancer Risk California Railyard Communities equally not arbitrarily choose 4.

The Coalition For A Safe Environment (CFASE) would like to request the adoption of eight new Railroad Industry Rulemakings:

1. Require California Railroads to establish a Public Health Risk Reduction Plan for each Major High Risk Railyard.
2. Require California Railroads to conduct a Health Impact Assessment (HIA) to identify all public health impacts from all air emission sources, all public health care costs, to establish a Public Health Baseline and Mitigation Plan to address health impacted residents and children. HIA's are recommended by US EPA Region 9 and the Los Angeles County Department of Health in addition to Health Risk Assessments for the Ports & Goods Movement Industry.
3. Require California Railroads to establish a Public Health Care Trust Fund to pay for public health care, medical prescriptions, medical equipment, rehabilitation and burial expenses of impacted residents and children. We recommend a \$ 25 million annual contribution by each railroad until all public health impacts have been reduced to less than significant and there are no state or county public subsidized health care costs.
4. Require California Railroads to replace all diesel fuel locomotives, diesel powered transport refrigeration units, cargo handling equipment, yard hostlers, trucks, equipment, generators, vehicles, cranes, fuel pumps and storage tanks with Zero & Near Zero Emission VOC Technologies such as off-the-shelf Vapor Recovery Systems and ZERO Emissions Electric Battery Power, Hydrogen Fuel Cell Power or equivalent technologies.
5. The establishment of a Maximum Achievable Control Technology (MACT) Standard for California Railroad diesel fuel locomotives, cargo handling equipment, transport refrigerated units, cranes, yard hustlers, trucks, equipment and power generators transport refrigerated units emissions.
6. Require the highest risk California Railroad Yards to have real time 24/7 air quality community fence-line monitoring of all categories of air emissions.
7. Require that the Dispute Administrative Panel include one public railyard community member nearest the railyard, one AQMD member nearest the railyard, one medical professional and one technology professional.
8. Require that the 18 California High Cancer Risk Railyards establish a schedule to only allow ZERO Emissions and Near Zero Emissions Drayage Trucks to enter their facilities. We recommend that 50% of Drayage Trucks be Electric Battery or Hydrogen Fuel Cell

and 25% be LNG/Natural Gas and 25% Ultra Low Sulfur Diesel Fuel/Biodiesel Fuel by the year 2015.

CFASE has determined that the CARB Proposed Railroad Industry Commitments are inadequate because:

1. CARB is failing to initiate one new railroad rulemaking measure it is legally authorized and required to do (H&SC 39602 & H&SC 39650 et seq. 43013 & 43018) to reduce significant public health risk from railroads, but instead is proposing something called a commitment with no significant long term air emission reductions, no mandatory ZERO Emissions Technology, no significant penalties or sanctions for failure to achieve reductions.
2. The CARB proposed Railyard Commitments will fail to meet California's State Implementation Plan goals for attaining federal ambient air quality standards for ozone and fine particulate matter (PM) thus jeopardizing California from receiving \$ billions in future federal transportation infrastructure funding.
3. CARB staff is only proposing 4 Railyard Commitments when 18 Major California Railyards have been identified as High Cancer Risk in the CARB Recommendations to Implement Further Locomotive & Railyard Emission Reductions September 2009 Report.
4. More than 3 million California residents who live near railyards are exposed to a lifetime cancer risk or more than 10 in one million and the proposed Railyard Commitments will never achieve less than 1 in a million.
5. Failed to include more than 30 other public and governmental regulatory agency recommended options to further reduce locomotive and railyard emissions identified in the September 2009 Report and Public Comments.
6. CARB is only proposing 2 new air quality monitoring near 2 of the 4 proposed Railyard Commitment communities instead of fence-line as requested by impacted communities and not at all of the 18 Major California Railyards.
7. The CARB proposed Railyard Commitments Declining Cap on diesel PM emissions will never achieve a less than significant impact.
8. Tier 3 and Tier 4 Locomotives will never achieve ZERO Emissions or even Near Zero Emissions.
9. The proposal to conduct semi-annual inspections is unacceptable. We want monthly unannounced inspections and we want CARB to allocate an Annual Inspection Budget.
10. We want a written Filed Inspection Plan, Criteria and Field Inspection Survey Schedule to be included and made available for public review and comment before any final commitment or rulemaking approval.
11. We want a Compliance, Enforcement and Penalty Plan to be included and made available for public review and comment. We want financial penalties to be significantly

high to deter failure to comply or a cheap get out of jail fine that becomes a standard inexpensive cost of doing business. We recommend 1st Fine of \$ 100,000, 2nd Fine \$ 500,000 and 3rd Fine of \$ 1 million 4th Fine \$ 10 million 5th fine their permit to operate in California suspended. We want CARB to allocate an annual Compliance, Enforcement and Penalty Plan Budget before any final commitment or rulemaking approval.

12. CARB's proposal for a 30 day review of Emissions Reduction Plan is unacceptable because it fails to allow for public review and comment. We want a 60 day public comment period. In every previous CARB and AQMD emissions inventory and reduction proposals published the public has discovered numerous errors and emissions.
13. CARB's PM selected criteria fails to include Ultrafine Particles the most harmful and deadly category of PM.
14. CARB's current and proposed Health Risk Assessments (HRA's) fail to include risk and exposure from all railroad industry toxic air emission sources, chemicals and substances types. Sources include but are not limited to locomotives, cargo handling equipment, yard hostlers, transport refrigeration units, trucks, equipment, vehicles, cranes, power generators, fuel pumps and storage tanks.
15. CARB's proposal fails to prevent the Railroad Industry from transferring their dirtiest locomotives to another California railyard.
16. CARB's proposal to consider pursuing or petitioning federal legislation is unacceptable, we want CARB to identify what type of new or revised Railroad Industry federal legislation they would propose and sponsor. Consider mean nothing.
17. CARB's proposal fails to include numerous EJ Community requested operational changes. The Wilmington community requested that BNSF not use a rail line route through the middle of the residential community and instead use an outlying track route. CARB staff did not recommend anything and historically has never taken any action to require the Railroad Industry to change its flexible business operations. CARB's past illegally approved 2005 MOU resulted in no community requested operational changes. The Railroad Industry only states that it will study and provide recommendations. They also state that it is a one-time offer, take it or leave it.
18. CARB's reference to conducting Air Dispersion Modeling is unacceptable without first describing what type of Air Dispersion Modeling will be conducted. We want modeling and test sampling to be done by the University of Riverside and Desert Research Institute which placed 70 air sampling devices at 1km, 3km and 5km in Wilmington from a chemical release point in order to determine and create an accurate dispersion pattern or isopleths.

CFASE has determined that the CARB Proposed Railroad Industry Commitments fail to include the Maximum Feasible Toxic Air Emission Impact Reductions:

- The proposed commitments do not require Union Pacific and BNSF Railroad to reduce their toxic PM, NOX, SOX, CO, CO2 air emissions to less than significant.

Public Impacts: Lung Cancer, Asthma, Bronchitis, COPD, Death

- The proposed commitments do not require Union Pacific and BNSF Railroads to reduce their Volatile Organic Compounds (VOC's) air emissions to less than significant.

Public Impacts: Leukemia, Lymphoma, Myeloma, Anemia, Death

- The proposed commitments do not require Union Pacific and BNSF Railroads to reduce their Green House Gas Emissions to less than significant.

Public Impacts: Heat Stroke, Death, Agriculture Industry Destruction, Fishing Industry Destruction, Fresh Water Depletion

- The proposed 85% reduction from 2005 emission levels by 2020 will never achieve less than significant impact. We need 85% reduction by 2015. We need to achieve 2000 air emission levels by 2020, 1990 by 2025, 1980 by 2030 and 1970 by 2035.
- The proposed commitments do not require the adoption of all feasible maximum air pollution control technologies such as the ACTI - Advanced Locomotive Emission Control System (ALECS) - Locomotive Smoke Stack Fume Hood Capture Technology. CARB validated the 93%-98% emissions capture efficiency but did not require it. The South Coast AQMD has also validated the test results.
- The proposed commitments do not require the replacement of forever polluting diesel fuel locomotive engines with Green ZERO Emissions Electric Trains currently being used in Europe or the newest maximum efficiency ZERO Emissions Electric MagLev Train System. American MagLev Technology Corporation has offered to build a Maglev Train container shipment demonstration project at no cost to the public at the Ports of Los Angeles and Long Beach to the Union Pacific ICTF Terminal (\$50 Million Commitment) and the new technology job creating manufacturing facility in Southern California. They have now been waiting four years for the OK.

The Coalition For A Safe Environment and all California Environmental Justice Organizations do not support CARB's proposal to support efforts of the Railroad Industry to seek a mix of federal, state and local incentive funding.

The Railroad Industry is a for profit business enterprise that should use its own private investor funds for its research & development and technology investments. The public has requested that they invest in ZERO Emissions Cargo Transportation Systems Technology and they have refused.

As in all technologies they are currently becoming obsolete and their failure to invest in 21st Century Technology is their fault and we should embrace the new ZERO Emissions Technology Companies.

They have refused over 90% of all of the public requests for voluntary changes and we do not support providing them public funds.

Our research of annual reports and SEC K10 filings has disclosed that BNSF and Union Pacific Railroads have the financial resources to make significantly larger investments in ZERO Emissions Technologies, MACT Technologies and Public Health Care:

BNSF RAILROAD

Revenues (Billions)

<i>2009</i>	<i>2008</i>	<i>2007</i>	<i>2006</i>	<i>2005</i>
\$ 13.848 B	\$ 17.787 B	\$ 15.610 B	\$ 14.985 B	\$ 12.987 B

Net Income (Profit in Billions)

<i>2009</i>	<i>2008</i>	<i>2007</i>	<i>2006</i>	<i>2005</i>
\$ 2.014 B	\$ 2.362 B	\$ 2.199 B	\$ 1.889 B	\$ 1.534 B

UNION PACIFIC RAILROAD

Revenues (Billions)

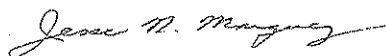
<i>2009</i>	<i>2008</i>	<i>2007</i>	<i>2006</i>	<i>2005</i>
\$ 14.143 B	\$ 17.970 B	\$ 16.283 B	\$ 15.578 B	\$ 13.578 B

Net Income (Profit in Billions)

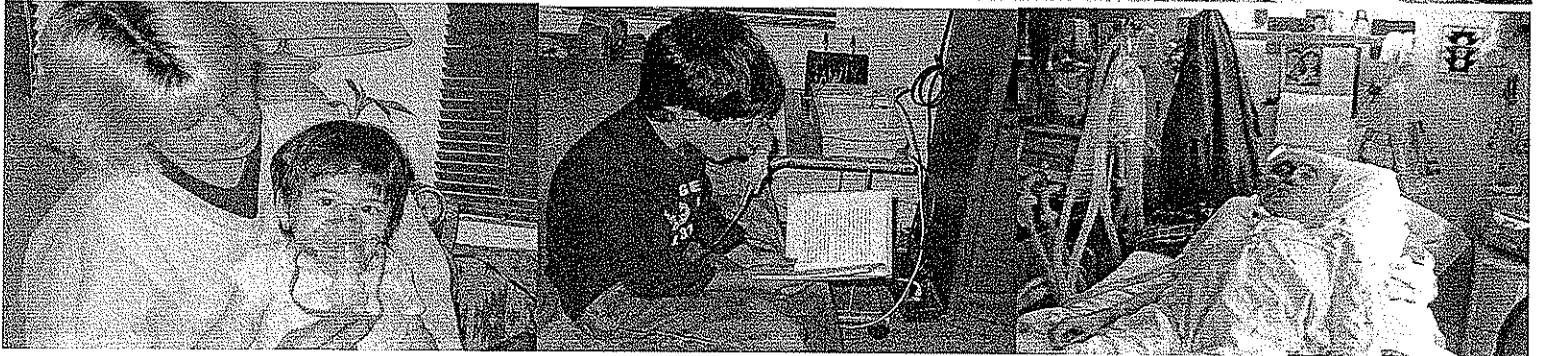
<i>2009</i>	<i>2008</i>	<i>2007</i>	<i>2006</i>	<i>2005</i>
\$ 1.898 B	\$ 2.338 B	\$ 1.855 B	\$ 1.606 B	\$ 1.026 B

In conclusion, we do not believe that CARB's staff's Railroad Industry Commitment proposals are adequate to protect public health, reduce public health risk or our environment. We ask that you reject the proposal and create a public panel or task force to develop an adequate proposal and plan.

Cordially,



Jesse N. Marquez
Executive Director



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